

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

INTERVENTIONAL SPINE MEDICINE

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid bonus

Employer: Interventional Spine Medicine, 944 Calef Highway, Barrington, NH 03825

Date of Hearing: March 16, 2016

Case No.: 52214

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on January 25, 2016. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on February 25, 2016.

The claimant testified that she was due \$8,000.00 in unpaid bonuses. She stated that her wage plan called for a \$5,000.00 yearly bonus above the agreed upon salary rate. The claimant further testified that there was no written hiring agreement or any signed wage plan. She said that in April of 2012 she agreed to a salary of \$80,000.00 plus the annual \$5,000.00 bonus.

The claimant testified that in the year 2013 she received her agreed upon salary and a bonus of \$4,000.00. In the year 2014 she only received her salary. In 2015 she received her salary plus a bonus of \$2,000.00. The \$2,000.00 was distributed in January of 2016.

Over the course of her employment, the claimant submitted wage studies for the national average compensation for positions such as she held in New Hampshire. The employer never responded to any of these studies and she continued to receive her salary. There was some negotiation over the wage package but nothing ever changed from 2012.

The employer testified that there was a wage package in place and it called for an annual salary of \$80,000.00 per year. This amount was paid each and every pay period. The employer testified that there was a plan for bonus payment but it was strictly a prerogative of management. The employer testified that since there was a bonus plan and it was a prerogative of management, two payments were made during the course of the claimant's tenure with the

employer. The claimant accepted these bonus payments. There was never a payment of a \$5,000.00 bonus.

The employer did testify that they considered the documentation on national salary structures for comparable positions but nothing was ever done to change the salary scale of \$80,000.00.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

This section of the law mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as a bonus payment into the category of wages when the bonus is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

It is very clear that there was a salary in place and that it was paid by the employer. In the issue of a set bonus payment there is no evidence that this practice was ever in place. There may have been discussions about the payment of a set bonus but it was never followed up on by the employer. Both parties admit that there is no written hiring agreement or written wage plan.

The practice of the past few years is consistent with the testimony of the employer about the fact that a bonus was a prerogative of management. There were several bonus payments but not one of them was for the \$5,000.00 amount.

The Wage Claim does not deal with the national or area wages set for the particular job function. These were presented to management as a guiding tool but are not a part of this Wage Claim. It is the finding of the Hearing Officer that there is no evidence that there was ever a guarantee of a yearly \$5,000.00 bonus to be a part of a salary plan. All wages have been paid.

The Wage Claim is invalid.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 29, 2016

Original: Claimant
cc: Employer

TFH/aph